

04-28850

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Chapter 13 Case:
Case Number BKY 03-51394-RJK

Phillip Janzig
Kathleen Janzig,

Debtor(s)

**NOTICE OF HEARING AND MOTION
FOR RELIEF FROM STAY**

To: The Debtor and other entities specified in Local Rule 9013-3(a).

1. US Bank moves the Court for relief requested below and gives Notice of Hearing.

2. The Court will hold a Hearing on this motion at 10:30 a.m., on November 29, 2004, in Courtroom No. 2, at the United States Courthouse, at 515 West First Street, in Duluth Minnesota.

3. Any response to this motion must be filed and delivered not later than November 23, 2004, which is three days before the time set for the hearing(excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than November 17, 2004, which is seven days before the time set for the hearing(excluding Saturdays, Sundays and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed on October 30, 2003. The case is now pending in this court.

5. This Motion arises under 11 U.S.C. §362 and Bankruptcy Rule 4001. This motion is filed under Bankruptcy Rule 9014 and Local Rules 9013-1 - 9019-1(d). Movant Requests Relief with respect to exempt property of the debtor subject to a lien.

6. On September 20, 1985, Phillip Janzig and Kathleen Janzig made, executed and delivered to St. Louis County Federal Savings and Loan Association their Note (hereinafter referred to as the "Note"), in the original principal amount of \$35,500.00 bearing interest from the date thereof at the rate of 9.50% per annum until paid, payable in monthly installments of \$323.73 commencing on November 1, 1985 and on the first day of each and every calendar month thereafter until the principal and interest were fully paid. A copy of the Note is attached hereto as Exhibit "A" and made a

part thereof by reference.

7. On September 20, 1985, to secure the payment of the Note, Phillip Janzig and Kathleen Janzig executed and delivered to St. Louis County Federal Savings and Loan Association their Mortgage (hereinafter referred to as the "Mortgage"), mortgaging and conveying certain real estate in St. Louis County, Minnesota, legally described as follows:

Southerly 35 feet of Lot 27 and Northerly 35 feet of Lot 28,
Block 1, Rolling Green Division

which property has an address of: 1015 Acacia Ave, Proctor, MN 55810. The mortgage was filed for record in the office of the Registrar of Titles, County of St. Louis, on September 24, 1985, as Document No.470589, and was subsequently assigned to Movant by assignment of mortgage. A copy of the mortgage and assignment are attached hereto as Exhibit "B" and made a part hereof by reference.

8. The debtors have filed a plan dated October 29, 2003, which was confirmed by subsequent Court Order. The plan provided, among other things that:

"5. Home Mortgages In Default [§1322(b)(5)] - The trustee will cure defaults on claims secured only by a security interest in real property that is the debtor's principal residence as follows. The debtor will maintain the regular payments which come due after that date the petition was filed. The creditors will retain their liens. The amounts of default are estimates only. The trustee will pay the actual amounts of default.

9. Notwithstanding the foregoing provisions of said plan, the debtors have not maintained current payments with respect to said note and mortgage, while this case is pending.

10. Debtors are in arrearage for monthly payments as shown below. The last payment received from Debtors was applied to the July, 2004 post-petition payment as that was the next payment due. Post-petition arrearage include the following:

1 payments @ \$485.18	\$485.18
2 payments @ \$533.35	\$1,066.70
Accrued late charges	37.85
Property Inspections	57.00
Suspense Balance	-29.64
Attorneys Fees & Costs	<u>800.00</u>
TOTAL POST-PETITION	\$2,417.09

Through Debtors' failure to make current post-petition payments, amounts currently due and owing include the following:

Principal	\$24,121.85
Interest	747.46
Accumulated late fees	37.85
Property inspections	57.00
Suspense Balance	-29.64
Attorneys Fees & Costs	<u>800.00</u>
TOTAL	\$25,734.52

11. Debtors have claimed said mortgaged property as exempt pursuant to MSA 510.01, 510.02.

12. By reason of the foregoing, good cause exists to lift the automatic stay imposed by 11 USC section 362 to allow Movant to pursue its remedies under State Law.

13. **This is an attempt to collect a debt and any information obtained will be used for that purpose.** This notice is required by the provisions of the Fair Debt Collection Practices Act and does not imply that we are attempting to collect money from anyone who has discharged the debt under the Bankruptcy Laws of the United States.

Wherefore, US Bank moves the court:

1. For an Order granting creditor relief from the automatic stay of 11 USC section 362.

2. For such other and further relief as the Court finds just and proper.

Dated: _____

10-13-01

Signed: /e/ Nancy A. Nordmeyer

SHAPIRO & NORDMEYER, L.L.P.
Nancy A. Nordmeyer-121356
Lawrence P. Zielke-152559
Attorney for movant
7300 Metro Boulevard #390
Edina, MN 55439-2306
(952) 831-4060

VERIFICATION

I, Dan Arntsen, the Bankruptcy Manager for Fidelity National Foreclosure Solutions, the authorized servicer for movant, the movant named in the foregoing notice of hearing and motion, declare under penalty of perjury, that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on:

10-11-04

Signed:

[Signature]

Fidelity National Foreclosure Solutions
1270 Northland Drive, Suite 200
Mendota Heights, MN 55120

ADJUSTABLE RATE NOTE

THIS NOTE CONTAINS A PROVISION ALLOWING FOR CHANGES IN MY INTEREST RATE. IF MY INTEREST RATE INCREASES, MY MONTHLY PAYMENTS WILL BE HIGHER. IF MY INTEREST RATE DECREASES, MY MONTHLY PAYMENTS WILL BE LOWER.

September 20, 1986, Duluth, Minnesota
City State

1013 Acadia Street - Proctor, Minnesota 55810
Property Address

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$38,500.00 (this amount is called "principal"), plus interest, to the order of the Lender. The Lender is St. Louis County Federal Savings and Loan Association. I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on that part of principal which has not been paid beginning on the date I receive principal and continuing until the full amount of principal has been paid.

Beginning on the date I receive principal, I will pay interest at a yearly rate of 9.50%. The interest rate that I will pay will change in accordance with Section 4 of this Note.

The interest rate required by this Section and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note. If I am required to pay immediately in full as described in Section 7(c), the interest rate will not increase so long as this requirement continues, however.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making payments every month.

I will make my monthly payments on the 1st day of each month beginning on November 1, 1986. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. My monthly payments will be applied to interest before principal. If on October 1, 2015, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "maturity date."

I will make my monthly payments at P.O. Box 145 - Duluth, Minnesota 55801 or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

My initial monthly payments will be in the amount of U.S. \$323.73. This amount may change to reflect changes in the interest rate that I must pay. The Note Holder will determine my monthly payment in accordance with Section 4 of this Note.

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the 1st day of October 1986 and on that day of the month every twelve (12) months thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an "Index." The Index is the weekly average yield on United States Treasury securities adjusted to a constant maturity of one (1) year, as made available by the Federal Reserve Board. The most recent Index figure available as of 45 days before each Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index which is based upon comparable information. The Note Holder will give me notice of its choice. The increase or decrease in my interest rate at each change date will not be more than one and three-fourths percent (1.75%). My new interest rate will not exceed 15.875% per year at any time during the term of the loan.

MINNESOTA—FHA/MLA UNIFORM ADJUSTABLE RATE LOAN—(TREASURY INDEX)—2/73

44423-2 SAP Systems and Forms

265461

[space Above This Line For Recording Date]

MORTGAGE

THIS MORTGAGE ("Security Instrument") is given on September 20, 1989. The mortgagor is Philip Janzig and Kathleen Janzig, husband and wife ("Borrower"). This Security Instrument is given to ST. LOUIS COUNTY FEDERAL SAVINGS AND LOAN ASSOCIATION, which is organized and existing under the laws of the United States of America, and whose address is P.O. Box 133, Duluth, Minnesota 55801 ("Lender"). Borrower owes Lender the principal sum of Thirty-Eight Thousand Five Hundred and no/100 Dollars (U.S. \$38,500.00). This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on September 1, 2012, and for interest at the yearly rate of 9.50 percent. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument, and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender, with power of sale, the following described property located in St. Louis County, Minnesota:

Southerly 35 feet of Lot Twenty-seven (27) and Northerly 35 feet of Lot Twenty-eight (28), Block One (1), ROLLING GREEN DIVISION, according to the recorded plat thereof.

No. 63365 Date SEP 23 1989
 Registration Tax of \$ 52.75
 By SHEL PETERSEN, County Auditor
 Checked by [Signature] Deputy Cashier
 SEP 23 1989

DUPLICATE

which has the address of 2015 Agatha Street, PROCTOR
 (Street) (City)
 Minnesota 55810 ("Property Address")
 (Post Office)

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water rights and stock and all fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

MINNESOTA - Single Family - FNMA/FHLMC UNIFORM INSTRUMENT

Form 3024 12/83

ELLIS & SONS SYSTEMS AND FORMS
CHICAGO, IL

04-28850

ASSIGNMENT OF MORTGAGE

KNOW ALL BY THESE PRESENTS, That St. Louis County Federal Savings and Loan Association a corporation duly organized and existing under the laws of the State of _____ party of the first part, in consideration of the sum of One and no/100 (\$1.00) Dollars, in hand paid by US Bank a _____ corporation, whose address is _____ party of the second part, receipt whereof is hereby acknowledged, does hereby sell, assign, transfer and set over, to said party of the second part, US Bank and assigns, that certain mortgage executed by Phillip Janzig and Kathleen Janzig, husband and wife, as mortgagor(s) to St. Louis County Federal Savings and Loan Association as mortgagee, bearing the date September 20, 1985 and registered in the office of Registrar of Titles of the County of St. Louis and State of Minnesota, on September 24, 1985, as Document No. 470589 together with all right and interest in the land therein described, lying in the County of St. Louis, State of Minnesota, described as follows, to-wit:

Southerly 35 feet of Lot 27 and Northerly 35 feet of Lot 28, Block 1, Rolling Green Division

and in the note and obligations therein specified, and to the debt thereby secured; and does hereby covenant with said party of the second part US Bank and assigns, and that it has good right to sell, assign, and transfer the same.

IN TESTIMONY WHEREOF, The said first party has caused these presents to be executed in its corporate name by its _____ and its _____, and its corporate seal to be hereunto affixed this _____ day of _____, 200__.

SEAL

St. Louis County Federal Savings and Loan Association

By _____
Its _____

By _____
Its _____

State of _____)
County of _____) SS.

The foregoing instrument was acknowledged before me this _____ day of _____, 200__, by _____, the _____ and _____ of St. Louis County Federal Savings and Loan Association a _____ corporation, on behalf of the corporation.

Notary

This Instrument was Drafted by
SHAPIRO & NORDMEYER, L.L.P.
By: Nancy A. Nordmeyer - 121356
7300 Metro Boulevard
Suite 390
Edina, MN 55439-2306
(952)831-4060

UNITED STATES BANKRUPTCY COURT

DISTRICT OF MINNESOTA

In Re:

Case No. 03-51394-RJK
Chapter 13

Phillip Janzig
Kathleen Janzig,

Debtor(s)

MEMORANDUM OF LAW

US Bank ("Movant"), submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Movant holds a valid, duly perfected mortgage on real property owned by the Debtors. On the date this case was filed, the Debtor(s) were delinquent in respect of payments due under the note and mortgage. Since this case was filed, Debtor(s) are in arrears in the total amount of \$2,417.09.

ARGUMENT

1. Under Section 362.(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such creditor." 11 U.S.C. Sec. 362 (d) (1). The Debtor(s) in this case have failed to make the payments required by the note and mortgage for a period of more than two months. Debtor(s) have not otherwise provided Movant with adequate protection of its interest in the property. Such circumstances constitute cause, within the meaning of Section 362 (d) (1), justifying relief from the stay. In Re Video East, Inc., 41 B. R. 176 (Bkrtcy. E. D. Pa. 1984); In Re Frascatore, 33 B. R. 687 (Bkrtcy. E. D. Pa. 1983).

2. Pursuant to Section 362 (d) (2) of the Bankruptcy Code, relief from the stay is also appropriate where Debtor(s) have no equity in the subject property and the property is not necessary to an effective reorganization. 11 U.S.C. Sec. 362 (d) (2). See, In Re Gellert, 55B.R. 970 (Bkrtcy. D. N. H. 1983). In the present case the balance due Movant on the note and mortgage is \$25,734.52. [The property is encumbered by a second mortgage in favor of Citicorp Trust Bank FSB in the approximate amount of \$17,685.00.]

Accordingly, Movant is entitled to an order terminating the stay and authorizing it to foreclose its mortgage on the property.

Dated: _____

p. B. a

Respectfully submitted,
SHAPIRO & NORDMEYER, L.L.P.

By: /e/ Nancy A. Nordmeyer
Nancy A. Nordmeyer-121356
Lawrence P. Zielke-152559
Attorney for Movant
7300 Metro Boulevard #390
Edina, MN 55439-2306
(952) 831-4060

SWORN CERTIFICATE OF SERVICE

STATE OF MINNESOTA)
) SS
COUNTY OF HENNEPIN)

I, **Stephanie Pilegaard** says that on October 13, 2004, I mailed copies of the annexed Memorandum of Law, Proposed Order for Relief from Stay, Notice of Hearing and Motion for Relief from Stay and Certificate of Service on the following interested parties at their last known address, by mailing to them, via first class mail, a copy thereof, enclosed in an envelope, postage prepaid and by depositing the same in the post office at Edina, Minnesota.

Phillip Janzig
1015 Acacia Ave
Proctor, MN 55810

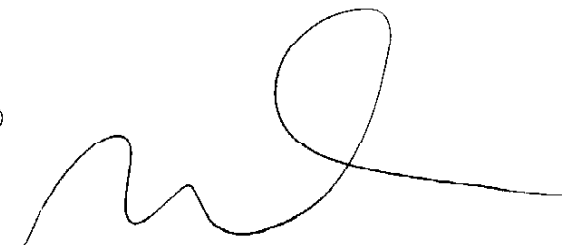
Kathleen Janzig
1015 Acacia Ave
Proctor, MN 55810

Peter Greenlee, Esq.
PO Box 1067
Twig, MN 55791

Michael Farrell, Trustee
PO Box 519
Barnesville, MN 56514

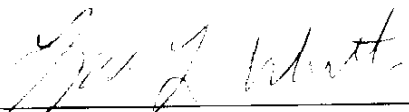
U.S. Trustee
1015 U.S. Courthouse
300 South 4th St.
Minneapolis, MN 55415

Citicorp Trust Bank, FSB
7467 New Ridge Road STE 200
Hanover, MN 21076

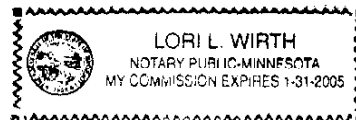


Stephanie Pilegaard

Subscribed and sworn to before me October 13, 2004.



Notary



04-28850
0040288234

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case Number BKY 03-51394-RJK

Phillip Janzig
Kathleen Janzig,
Debtor(s)

ORDER FOR RELIEF FROM STAY

The above-entitled matter came for hearing on November 29, 2004.

THIS CAUSE coming to be heard on the Motion of US Bank, a creditor in the proceeding, the Court having jurisdiction, due notice having been given, and the Court having been advised in the premises;

IT IS HEREBY ORDERED,

That the automatic stay heretofore entered in this case is modified to the extent necessary to allow US Bank, its successors and/or assigns, to foreclose, in accordance with State Law, the mortgage on the real property commonly known as:

Southerly 35 feet of Lot 27 and Northerly 35 feet of Lot
28, Block 1, Rolling Green Division

NOTWITHSTANDING Federal Rule of Bankruptcy Procedure 4001 (a)(3), this order is effective immediately.

Dated: _____

BY THE COURT:

Judge of Bankruptcy Court